RACHALK PRODUCTION, INC.
(ON RECONSIDERATION)

IBLA 82-511 Decided March 28, 1983

Reconsideration of that part of Rachalk Production, Inc., 65 IBLA 271 (1982), which set aside and remanded in part the decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 49417.

State Office decision set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest. However, where a BLM state office has established various categories relating to the availability of land for leasing, and there is a question concerning the definition of the pertinent category and that question is not answered by the case record, the decision will be set aside and remanded.

APPEARANCES: Darrell Barnes, Chief, Branch of Lands and Minerals, Bureau of Land Management, Salt Lake City, Utah, for the Bureau of Land Management; K. Donelson Foose, Esq., for Rachalk Production, Inc.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On July 12, 1982, the Board issued a decision, Rachalk Production, Inc., 65 IBLA 271 (1982), affirming in part and setting aside and remanding in part the decision of the Utah State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer U 49417. The basis for the rejection was that all the lands in the offer were in the proposed Little Rockies Primitive Area. Rachalk had argued that part of the lands described in its offer were outside of that area. We set aside BLM's decision, as it related

to those lands, because there was no map in the case file showing the extent of the proposed primitive area.

On November 29, 1982, the Utah State Office forwarded the case file to the Board with a transmittal memorandum entitled "Oil and Gas Offer to Lease, U 49417, Rachalk Production, Inc. (On Reconsideration)." Therein, BLM stated: "The case file now contains the additional documentation required to make a final determination as to the rejection of the W 1/2 Sec., 27, all of Sec. 28 and the NW 1/4 of Sec. 33 T. 34 S., R. 12 E., SLM, Utah."

The Board considered BLM's memorandum to be a request for reconsideration of our decision. On February 14, 1983, Rachalk filed a response to the request.

The information submitted by BLM includes a map (map 1) which shows that the lands in question were originally included in the 1975 Little Rockies Primitive Area Proposal. In addition, another map (map 2) shows that in 1982 the acreage remained in "Category 4 (no leasing)." The BLM Richfield District Manager states in a November 16, 1982, memorandum to the Utah State Director that in July 1982, various multiple-use decisions were made in connection with the Henry Mountain Management Framework Plan (MFP) and that at that time "[t]he decision was made to maintain the category 4 (no leasing) designation for the Little Rockies area." Attached to the District Manager's memorandum were selected pages from the MFP relating to the Little Rockies area.

Rachalk now admits that the acreage in question is in the Little Rockies area; however, it challenges the no leasing category. Rachalk alleges that in 1977 and 1978 BLM allowed leasing on category 4 lands. It concludes, therefore, that "the map is obviously not the final word as to whether certain lands are leased." Rachalk also points to page 31 of the MFP which states that "[t]he Little Rockies is in an area that has retained much of its natural character as evidenced by its inclusion into the wilderness study program." Rachalk correctly states that the acreage in question was not included in the Little Rockies Wilderness Study Area (WSA). See Rachalk Production, Inc., supra at 273. Rachalk further argues that since State Highway U-276 crosses these lands, it is additional evidence that leasing should not be foreclosed. Rachalk also cites the need for "energy independence."

[1] Under the provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral and leasing laws. Id. However, a decision to refuse to lease land must be supported by facts of record that the refusal is required in the public interest. Tucker and Snyder Exploration Co., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

The present case record contains no definition of "category 4"; however, in a recent decision, Ida Lee Anderson, 70 IBLA 259 (1983), we quoted from the Utah State Office, BLM, Instruction Memorandum (IM) UT 81-169, dated March 12, 1981, stating:

> The problem with the decision of the State Office, however, is that while category 4 is entitled "Suspended or No Lease" it clearly contemplates issuance of leases in certain circumstances. Thus, the IM provides:
>
> 4. Category 4 - Suspended or No Lease
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> No stipulations are needed except if an applicant is willing to accept a no surface occupancy lease with the clear understanding that he will not be able to exploit the resources. An additional provision is attached to these leases if issued under a category 4 designation (see enclosure 5).
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> Enclosure 5, referenced above, is entitled "Request for Lease Issuance" in which the offeror acknowledges that the EAR recommends rejection of the offer, but requests issuance of the lease, nevertheless, for blocking purposes. It expressly provides that "it is understood that such issuance would prohibit occupancy and might never afford any beneficial use." [Footnote omitted.]

The Anderson case involved a BLM decision issued in February 1982. The record in that case indicated that the leasing categories were set forth in IM UT 81-169. That IM had an expiration date of September 30, 1982. On December 27, 1982, the Utah State Director, BLM, issued IM UT 83-70 titled "Updating Oil and Gas Categories in Planning and Decision Implementation." IM UT 83-70 states at pages 3-4:

> Category 4 - No Lease Areas
>
> These are areas where oil and gas leasing is undesirable pending further planning or special studies and includes areas that are too large in size to permit slant drilling or include values that cannot be adequately protected by the other lease categories. Examples include some areas of potential wild and scenic river corridors, and larger high quality scenic areas where roads, pipelines, drilling activities, etc. are not compatible with management for these uses. As further information is obtained, and public needs are better understood, these areas may continue to be closed to leasing or made available.
>
> No lease is issued; therefore, no stipulations required.

While category 4 under IM UT 81-169 contemplated issuance of a no surface occupancy lease in certain circumstances, category 4 under IM UT 83-70 specifically provides that no lease will issue.

In this case the MFP sets forth the rationale for the "category 4" determination. It is concluded in the MFP at page 40:

> The two excepted areas, which would remain in Category 4, are believed to contain unique resource values which are so delicate, that any type of oil or gas activity would seriously jeopardize them. The values include (1) an undisturbed, delicate riparian zone and wildlife habitat in the Beaver Wash area, and (2) an identified future transplant area for the sensitive desert bighorn sheep in the Little Rockies areas. [Emphasis added.]

In the past we have held that protection of the habitat of the desert bighorn sheep is in the public interest. Placid Oil Co., 58 IBLA 294, 301 (1982).

Because there is no indication of what definition of category 4 is applicable to the lands in question, we must set aside the BLM State Office decision and remand the case. Under the IM UT 81-169 definition, leasing would not automatically be precluded, Ida Lee Anderson, supra at 262, although it would be under IM UT 83-70.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision rejecting the acreage in question is set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge